

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 5
93RD GENERAL ASSEMBLY

Reported from the Committee on Commerce, Energy and the Environment, March 8, 2005, with recommendation that the Senate Committee Substitute do pass.

0469S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 94.110, 94.270, 94.360, 386.800, 393.106, 394.312, and 394.315, RSMo, and to enact in lieu thereof eight new sections relating to electric service to annexed areas.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 94.110, 94.270, 94.360, 386.800, 393.106, 394.312, and 394.315, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 94.110, 94.270, 94.360, 386.800, 393.106, 394.312, 394.315, and 394.500, to read as follows:

94.110. The council shall have power and authority to levy and collect a license tax on wholesale houses, auctioneers, architects, druggists, grocers, banks, brokers, wholesale merchants, merchants of all kinds, confectioners, delivery trucks, ice trucks, transfer trucks, laundry wagons, milk wagons, merchant delivery companies, cigar and tobacco stands, hay scales, wood dealers, coal dealers, lumber dealers, real estate agents, loan companies, abstracters, abstract agencies, loan agents, collection agencies, undertakers, public buildings, office buildings, public halls, public grounds, concerts, photographers in office or upon the streets, canvassers, artists, drummers, patent right dealers, automobile agents and dealers, automobile accessory dealers, insurance companies, insurance agents, taverns, hotels, rooming houses, boardinghouses, health schools, telephone companies, street contractors, paper hanger contractors, painting contractors, plastering contractors, and all subcontractors, flour mills, express company agencies, wagons, buggies, carriages, tinnerns, barbers, barbershops, hair dressers,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

hair dressing shops, whether conducted in connection with other business or separate beauty parlors, tailors, florists, nursery stock agents, book binders, monument dealers and agencies, manufacturing agents, shoe cobbler shops, storage warehouses, shoe shining parlors, newspaper offices, job printing plants, ready-to-wear clothing agencies, tailor-made clothing agencies, sewing machine agents, piano and organ dealers and agents, foreign coffee and tea dealers and agents, and all other vocations whatsoever, and fix the rate of carriage of persons and wagonage, drayage and cartage of property; and to levy and collect a license tax and regulate hawkers, peddlers, pawnbrokers, restaurants, butchers, wholesale butchers, bathhouses and masseurs, lunch stands, lunch counters, lunch wagons, soft drink and ice cream stand and vendors, ice cream parlors, peanut and popcorn stands, and stands of every kind, hucksters, opera houses, moving picture shows, private parks, public lectures, public meetings, baseball parks, outdoor advertising, horse and cattle dealers, stockyards, wagon yards, auto yards, oil stations, wholesale and retail, inspectors, gaugers, mercantile agents, manufacturing and other corporations, or institutions, machine shops, blacksmith shops, foundries, sewer contractors, building contractors, stone contractors, plumbing contractors, brick contractors, cement contractors, sidewalk contractors, bridge contractors, and all subcontractors, street railroad cars, light, power and water companies, **rural electric cooperatives**, gas companies, laundries, laundry agencies, ice plants and ice plant agencies, ice dealers, omnibuses, automobiles, automobile trailers, tractors, carts, drays, milk wagons, laundry wagons, delivery wagons, transfer and job wagons, ice wagons, and all other vehicles, traveling and auction stores, plumbers, pressing establishments, installment houses and agencies, produce and poultry dealers, feather renovators, bakers and bakeries, bakery delivery wagons, and delivery autos, bottling works, dye works, cleaning establishments, sand plants, steam fitters, corn doctors, chiropodists, hackmen, taxicabs, buses, draymen, omnibus drivers, porters, ferries, and to regulate the same, and the landing thereof, within the limits of the city, and all others pursuing like occupations; and to levy and collect a license tax, regulate, restrain, prohibit and suppress ordinaries, money brokers, money changers, intelligence and employment offices and agencies, public masquerades, balls, street exhibitions, dance halls, fortune tellers, pistol galleries, shooting galleries, palmists, private venereal hospitals, museums, menageries, equestrian performances, fluoroscopic views, picture shows, telescopic views, lung testers, muscle developers, magnifying glasses, ten pin alleys, ball alleys, bowling alleys,

billiard tables, pool and other tables, miniature golf courses, theatrical or other exhibitions, boxing and sparring exhibitions, shows and amusements, amusement parks, and the sales of unclaimed goods by express companies or common carriers, auto wrecking shops, bill posters, junk dealers, porters, carnival and street fairs, circuses and shows, for parade and exhibition, or both, skating rinks, and runners and solicitors for steamboats, cars, stages, taxicabs, hotels, rooming houses, boardinghouses, bathhouses, masseurs, health schools, and all other vocations and business whatsoever, and all others pursuing like occupations.

94.270. 1. The mayor and board of aldermen shall have power and authority to regulate and to license and to levy and collect a license tax on auctioneers, druggists, hawkers, peddlers, banks, brokers, pawnbrokers, merchants of all kinds, grocers, confectioners, restaurants, butchers, taverns, hotels, public boardinghouses, billiard and pool tables and other tables, bowling alleys, lumber dealers, real estate agents, loan companies, loan agents, public buildings, public halls, opera houses, concerts, photographers, bill posters, artists, agents, porters, public lecturers, public meetings, circuses and shows, for parades and exhibitions, moving picture shows, horse or cattle dealers, patent right dealers, stockyards, inspectors, gaugers, mercantile agents, gas companies, insurance companies, insurance agents, express companies, and express agents, telegraph companies, light, power and water companies, **rural electric cooperatives**, telephone companies, manufacturing and other corporations or institutions, automobile agencies, and dealers, public garages, automobile repair shops or both combined, dealers in automobile accessories, gasoline filling stations, soft drink stands, ice cream stands, ice cream and soft drink stands combined, soda fountains, street railroad cars, omnibuses, drays, transfer and all other vehicles, traveling and auction stores, plumbers, and all other business, trades and avocations whatsoever, and fix the rate of carriage of persons, drayage and cartage of property; and to license, tax, regulate and suppress ordinaries, money brokers, money changers, intelligence and employment offices and agencies, public masquerades, balls, street exhibitions, dance houses, fortune tellers, pistol galleries, corn doctors, private venereal hospitals, museums, menageries, equestrian performances, horoscopic views, telescopic views, lung testers, muscle developers, magnifying glasses, ten pin alleys, ball alleys, billiard tables, pool tables and other tables, theatrical or other exhibitions, boxing and sparring exhibitions, shows and amusements, tippling houses, and sales of unclaimed goods by express companies or common carriers, auto wrecking shops

and junk dealers; to license, tax and regulate hackmen, draymen, omnibus drivers, porters and all others pursuing like occupations, with or without vehicles, and to prescribe their compensation; and to regulate, license and restrain runners for steamboats, cars, and public houses; and to license ferries, and to regulate the same and the landing thereof within the limits of the city, and to license and tax auto liveries, auto drays and jitneys.

2. Notwithstanding any other law to the contrary, no city of the fourth classification with more than eight hundred but less than nine hundred inhabitants and located in any county with a charter form of government and with more than one million inhabitants shall levy or collect a license fee on hotels or motels in an amount in excess of twenty-seven dollars per room per year. No hotel or motel in such city shall be required to pay a license fee in excess of such amount, and any license fee in such city that exceeds the limitations of this subsection shall be automatically reduced to comply with this subsection.

3. Notwithstanding any other law to the contrary, no city of the fourth classification with more than four thousand one hundred but less than four thousand two hundred inhabitants and located in any county with a charter form of government and with more than one million inhabitants shall levy or collect a license fee on hotels or motels in an amount in excess of thirteen dollars and fifty cents per room per year. No hotel or motel in such city shall be required to pay a license fee in excess of such amount, and any license fee in such city that exceeds the limitations of this subsection shall be automatically reduced to comply with this subsection.

94.360. The council of any incorporated town or city in this state having a special charter and which contains not more than thirty thousand inhabitants may by ordinance levy and collect a license tax on wholesale houses, auctioneers, architects, druggists, grocers, banks, brokers, wholesale merchants, merchants of all kinds, confectioners, delivery trucks, ice trucks, transfer trucks, laundry wagons, milk wagons, merchant delivery companies, cigar and tobacco stands, hay scales, wood dealers, coal dealers, coal distributors, coal truckers, lumber dealers, real estate agents, loan companies, abstracters, abstract agencies, loan agents, collection agencies, undertakers, public buildings, office buildings, public halls, public grounds, concerts, photographers in office or upon streets, canvassers, artists, drummers, patent right dealers, insurance companies, insurance agents, taverns, hotels, rooming houses, boarding houses, sanitariums, hospitals, health schools, telephone companies, street contractors, paperhanger contractors,

painting contractors, plastering contractors, and all subcontractors, flour mills, express company agencies, opticians, wagons, buggies, carriages, tanners, barbers, barbershops, hairdressers, hair dressing shops, whether conducted in connection with other business or separate, beauty parlors, tailors, florists, nursery stock agents, bookbinders, monument dealers, and agencies, manufacturing agents, shoe cobbler shops, storage warehouses, shoe shining parlors, job printing plants, outdoor advertising, ready-to-wear clothing agencies, tailor-made clothing agencies, sewing machine agencies, piano and organ dealers and agents, foreign coffee and tea dealers, and agents or all other vocations whatsoever, and fix the rate of carriage of persons and wagonage, drayage and cartage of property; and may levy and collect a license tax and regulate hawkers, peddlers, pawnbrokers, restaurants, butchers, wholesale butchers, bathhouses and masseurs, lunch stands, lunch counters, lunch wagons, soft drink and ice cream stands and vendors, ice cream parlors, peanut and popcorn stands, and stands of every kind, hucksters, opera houses, moving picture shows, private parks, public lectures, public meetings, baseball parks, horse and cattle dealers, stockyards, wagon yards, auto yards, oil stations, wholesale and retail inspectors, gaugers, mercantile agents, manufacturing and other corporations, or institutions, machine shops, blacksmith shops, radio repair shops, foundries, sewer contractors, building contractors, stone contractors, sidewalk contractors, bridge contractors, plumbing contractors, brick contractors, cement contractors, and all subcontractors, street railroad cars, gas companies, **rural electric cooperatives**, light companies, power companies, and water companies, laundries, laundry agencies, rug and carpet cleaners, linen supply rental service, conditioning and renting for use, bed linen, table linen, towels, rugs, uniform aprons, coats, caps, coveralls, chair covers, automobile seat covers or any other items, ice plants and ice plant agencies, ice dealers, omnibuses, automobiles, automobile trailers, tractors, carts, drays, milk wagons, laundry wagons, delivery wagons, transfer and job wagons, ice wagons, and all other vehicles, traveling and auction stores, plumbers, pressing establishments, installment houses and agencies, produce and poultry dealers, feather renovators, baker and bakeries, bakery delivery wagons, and delivery autos, bottling works, dye works, cleaning establishments, sand plants, steamfitters, corn doctors, chiropodists, hackmen, taxicabs, buses, draymen, omnibus drivers, porters, dairies, and regulate the same, and all other pursuing like occupations; and may levy and collect a license tax, regulate, restrain, prohibit and suppress ordinaries, money brokers, money changers, intelligence

and employment offices, and agencies, public masquerades, balls, street exhibitions, dance halls, fortune tellers, pistol galleries, shooting galleries, palmists, private venereal hospitals, museums, menageries, equestrian performances, fluoroscopic views, picture shows, telescopic views, lung testers, muscle developers, magnifying glasses, ten pin alleys, ball alleys, bowling alleys, billiard tables, pool and other tables, miniature golf courses, theatrical or other exhibitions, boxing and sparring exhibitions, shows and amusements, amusement parks, and the sale of unclaimed goods by express companies or common carriers, auto wrecking shops, bill posters, junk dealers, porters, carnival and street fairs, circuses and shows for parade and exhibition, or both, skating rinks and runners, and solicitors for steamboats, cars, stages, taxicabs, hotels, rooming houses, boarding houses, bathhouses, masseurs, hospitals, sanitariums, health schools, and all other pursuing like occupations.

386.800. 1. No municipally owned electric utility may provide electric energy at retail to any structure located outside the municipality's corporate boundaries after [July 11, 1991] **August 28, 2005**, unless:

(1) The structure was [lawfully] receiving permanent service from the municipally owned electric utility prior to [July 11, 1991] **August 28, 2005**; or

(2) The service is provided pursuant to an approved territorial agreement under section 394.312, RSMo;

(3) The service is provided pursuant to lawful municipal annexation and subject to the provisions of this section; or

(4) The structure is located in an area which was previously served by an electrical corporation regulated under chapter 386, and chapter 393, RSMo, and the electrical corporation's authorized service territory was contiguous to or inclusive of the municipality's previous corporate boundaries, and the electrical corporation's ownership or operating rights within the area were acquired in total by the municipally owned electrical system prior to July 11, 1991. In the event that a municipally owned electric utility in a city with a population of more than one hundred twenty-five thousand located in a county of the first class not having a charter form of government and not adjacent to any other county of the first class desires to serve customers beyond the authorized service territory in an area which was previously served by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, RSMo, as provided in this subdivision, the municipally owned utility shall apply to the public service commission for an order assigning nonexclusive service territories. The proposed service area shall

be contiguous to the authorized service territory which was previously served by an electrical corporation regulated under the provisions of chapter 386, and chapter 393, RSMo, as a condition precedent to the granting of the application. The commission shall have one hundred twenty days from the date of application to grant or deny the requested order. The commission may grant the order upon a finding that granting of the applicant's request is not detrimental to the public interest. In granting the applicant's request the commission shall give due regard to territories previously granted to other electric suppliers.

2. Any municipally owned electric utility may extend, pursuant to lawful annexation, its service territory to include any structure located within a newly annexed area which has not received permanent service from another supplier within ninety days prior to the effective date of the annexation.

3. [When a municipally owned electric utility desires to extend its service territory to include any structure located within a newly annexed area which has received permanent service from another supplier within ninety days prior to the effective date of the annexation, it shall:

(1) Notify by publication in a newspaper of general circulation the record owner of said structure, and notify in writing any affected electric supplier and the public service commission, within sixty days after the effective date of the annexation its desire to extend its service territory to include said structure; and

(2) Within six months after the effective date of the annexation receive the approval of the municipality's governing body to begin negotiations pursuant to section 394.312, RSMo, with any affected electric supplier.

4. Upon receiving approval from the municipality's governing body pursuant to subsection 3 of this section, the municipally owned electric utility and the affected electric supplier shall meet and negotiate in good faith the terms of the territorial agreement and any transfers or acquisitions, including, as an alternative, granting the affected electric supplier a franchise or authority to continue providing service in the annexed area. In the event that the affected electric supplier does not provide wholesale electric power to the municipality, if the affected electric supplier so desires, the parties shall also negotiate, consistent with applicable law, regulations and existing power supply agreements, for power contracts which would provide for the purchase of power by the municipality from the affected electric supplier for an amount of power equivalent to the loss of any sales to customers receiving permanent service at structures within the annexed

areas which are being sought by the municipally owned electric utility. The parties shall have no more than one hundred eighty days from the date of receiving approval from the municipality's governing body within which to conclude their negotiations and file their territorial agreement with the commission for approval under the provisions of section 394.312, RSMo. The time period for negotiations allowed under this subsection may be extended for a period not to exceed one hundred eighty days by a mutual agreement of the parties and a written request with the public service commission.

5. For purposes of this section, the term "fair and reasonable compensation" shall mean the following:

(1) The present-day reproduction cost, new, of the properties and facilities serving the annexed areas, less depreciation computed on a straight-line basis; and

(2) An amount equal to the reasonable and prudent cost of detaching the facilities in the annexed areas and the reasonable and prudent cost of constructing any necessary facilities to reintegrate the system of the affected electric supplier outside the annexed area after detaching the portion to be transferred to the municipally owned electric utility; and

(3) Four hundred percent of gross revenues less gross receipts taxes received by the affected electric supplier from the twelve-month period preceding the approval of the municipality's governing body under the provisions of subdivision (2) of subsection 3 of this section, normalized to produce a representative usage from customers at the subject structures in the annexed area; and

(4) Any federal, state and local taxes which may be incurred as a result of the transaction, including the recapture of any deduction or credit; and

(5) Any other costs reasonably incurred by the affected electric supplier in connection with the transaction.

6. In the event the parties are unable to reach an agreement under subsection 4 of this section, within sixty days after the expiration of the time specified for negotiations, the municipally owned electric utility may apply to the commission for an order assigning exclusive service territories within the annexed area and a determination of the fair and reasonable compensation amount to be paid to the affected electric supplier under subsection 5 of this section. Applications shall be made and notice of such filing shall be given to all affected parties pursuant to the rules and regulations of the commission

governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission. The commission shall hold evidentiary hearings to assign service territory between affected electric suppliers inside the annexed area and to determine the amount of compensation due any affected electric supplier for the transfer of plant, facilities or associated lost revenues between electric suppliers in the annexed area. The commission shall make such determinations based on findings of what best serves the public interest and shall issue its decision by report and order. Review of such commission decisions shall be governed by sections 386.500 to 386.550. The payment of compensation and transfer of title and operation of the facilities shall occur within ninety days after the order and any appeal therefrom becomes final unless the order provides otherwise.

7. In reaching its decision under subsection 6 of this section, the commission shall consider the following factors:

(1) Whether the acquisition or transfers sought by the municipally owned electric utility within the annexed area from the affected electric supplier are, in total, in the public interest, including consideration of rate disparities between the competing electric suppliers and issues of unjust rate discrimination among customers of a single electric supplier if the rates to be charged in the annexed areas are lower than those charged to other system customers; and

(2) The fair and reasonable compensation to be paid by the municipally owned electric utility, to the affected electric supplier with existing system operations within the annexed area, for any proposed acquisitions or transfers; and

(3) Any effect on system operation, including, but not limited to, loss of load and loss of revenue; and

(4) Any other issues upon which the municipally owned electric utility and the affected electric supplier might otherwise agree, including, but not limited to, the valuation formulas and factors contained in subsections 4, 5 and 6, of this section, even if the parties could not voluntarily reach an agreement thereon under those subsections.

8. The commission is hereby given all necessary jurisdiction over municipally owned electric utilities and rural electric cooperatives to carry out the purposes of this section consistent with other applicable law; provided, however,

the commission shall not have jurisdiction to compel the transfer of customers or structures with a connected load greater than one thousand kilowatts. The commission shall by rule set appropriate fees to be charged on a case-by-case basis to municipally owned electric utilities and rural electric cooperatives to cover all necessary costs incurred by the commission in carrying out its duties under this section.] **Whenever a city, which is served by a municipally owned electric utility, proposes to annex land that is located within the assigned electric service area of an electric service supplier, the city shall adopt an annexation ordinance stating that the city is considering the annexation of the land and shall give notice that a public hearing will be held to consider the annexation. All rights of an electric service supplier to provide electric service in an area annexed by a city shall terminate one hundred eighty days from the date of annexation, unless such electric service supplier was granted the right, by the city, to continue to provide electric service in all or part of the annexed area in the annexation ordinance or a subsequent ordinance within one hundred eighty days of the annexation. When making the decision on which electric utility, the municipally owned electric utility or the electric service supplier, shall provide electric service in the annexed area the city shall consider certain factors including, but not limited to:**

- (1) The public convenience and necessity;**
- (2) Desires of the customer or customers to be served;**
- (3) Economic impact on the suppliers;**
- (4) Economic impact on the customers of the suppliers;**
- (5) The utility's operational ability to serve the annexed area;**
- (6) Avoiding the wasteful duplication of facilities;**
- (7) The desire of the city to limit the number of electric suppliers within the city;**
- (8) Avoiding unnecessary encumbrance on the landscape; and**
- (9) Preventing the waste of materials and natural resources.**

Within thirty days after the final decision of the city, any supplier aggrieved thereby may file an appeal in the circuit court of the county in which the annexed area is located to determine the reasonableness of the final decision. In the event that an appeal of the decision is filed in the circuit court, the electric service supplier providing service at the time of annexation shall continue to provide service until such time as

the appeal has been concluded.

4. In the event the electric service supplier's rights to provide electric service in the annexed area are terminated and the municipally owned utility does not effect the assumption of electric service to the annexed area at the termination of the applicable one hundred eighty day period as provided in subsection 3 of this section, then the electric service supplier shall have the right to continue electric service to the annexed area and charge its ordinary rates therefore until the municipally owned electric utility does assume service to the annexed area. Such service shall be free of any franchise fee or other compensation to the city. If the municipally owned electric utility has not assumed service to the annexed area within one hundred eighty days following the applicable one hundred eighty day period provided in subsection 3 of this section, the city may grant the electric service supplier the right to provide electric service in the annexed area.

5. Whenever the electric service rights of an electric service supplier are terminated under subsection 3 of this section, fair and reasonable compensation shall be paid to such electric service supplier by the municipally owned utility. Such compensation shall be an amount mutually agreed upon by the electric service supplier and the municipally owned utility, or in the event a sum cannot be mutually agreed upon, the sum of the following:

(1) The present-day reproduction cost, new, of the properties and facilities serving the annexed areas, less depreciation calculated using the method used by the electric supplier at the time of the annexation;

(2) An amount equal to the reasonable and prudent cost of detaching the facilities in the annexed areas and the reasonable and prudent cost of constructing any necessary facilities to reintegrate the system of the affected electric service supplier outside the annexed area after detaching the portion to be transferred to the municipally owned electric utility;

(3) Four hundred percent of gross revenues less gross receipts taxes received by the affected electric supplier from the twelve-month period preceding the annexation, normalized to produce a representative usage from customers at the subject structures in the annexed area;

(4) Any federal, state, and local taxes that may be incurred as a result of the transaction, including the recapture of any deduction or credit;

(5) Any other costs reasonably incurred by the affected electric service supplier in connection with the transaction; and

6. In the event that the parties are unable to agree upon an amount of compensation to be paid under this section, after sixty days following the date of termination of service rights either party may apply to the circuit court in the county where the annexation occurred, for determination of compensation. Such determination shall be made by the court sitting without a jury.

393.106. 1. As used in this section, the following terms mean:

(1) "Permanent service", electrical service provided through facilities which have been permanently installed on a structure and which are designed to provide electric service for the structure's anticipated needs for the indefinite future, as contrasted with facilities installed temporarily to provide electrical service during construction. Service provided temporarily shall be at the risk of the electrical supplier and shall not be determinative of the rights of the provider or recipient of permanent service;

(2) "Structure" or "structures", an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical supplier. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section shall be construed to confer any right on an electric supplier to serve new structures on a particular tract of land because it was serving an existing structure on that tract.

2. Once an electrical corporation or joint municipal utility commission, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800, RSMo, and section 394.080, RSMo, or pursuant to a territorial agreement approved under section 394.312, RSMo. **The public service commission, upon**

the joint application and agreement of an electrical corporation or joint municipal utility commission serving a structure and another electric service supplier of retail electric energy, shall order a change of supplier to the structure to the other electric supplier if the structure is located in the service area designated to the other electric service supplier under section 394.500, RSMo, or the territory of the other electric service supplier under a territorial agreement under 394.312, RSMo, unless the commission finds that the customers at the structure will not receive adequate and reliable electric service if the change of supplier is granted. The applicants shall file a statement with the secretary of the commission, with a copy to the office of the public counsel, that identifies the structures to be changed, the electric service supplier to serve the structures after the change, and the justification for the change. Unless the staff of the commission or the office of the public counsel files an objection to the application and agreement within thirty days of the filing, the application shall be deemed approved by the commission. If the staff of the commission or the office of the public counsel files an objection to the application, the commission shall, after hearing, issue its report and order either approving or denying the proposed transfer. In future ratemaking proceedings, the commission shall give no consideration or weight to the fact that the electrical corporation has agreed to the change of supplier for its customers located in the designated service areas of another electric service supplier under either section 394.500, RSMo, or the territory of the other electric service supplier under a territorial agreement under section 394.312, RSMo. Notwithstanding the provisions of section 393.190, electric facilities serving transferred customers shall be deemed not necessary or useful in the performance of the electrical corporation's duties to the public and therefore may be transferred to the other electric service supplier without prior commission approval. For all other applications for change of suppliers, the public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent

jurisdiction. Except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing corporations pursuant to this chapter. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred. However, those customers who had canceled service with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per previous procedures. No customer shall be allowed to change electric suppliers by disconnecting service between May 1, 1991, and July 11, 1991.

394.312. 1. Competition to provide retail electric service, as between rural electric cooperatives, electrical corporations and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.

2. Such territorial agreements shall specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement, any and all powers granted to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality, notwithstanding the provisions of section 394.020 and of section 394.080 to the contrary, and any and all powers granted to a municipally owned utility, pursuant to the agreement, to operate in areas beyond the corporate municipal boundaries of its municipality. Where the parties cannot agree, they may, by mutual consent of all parties involved, petition the public service commission to designate the boundaries of the electric service areas to be served by each party and such designations by the commission shall be binding on all such parties. Petitions shall be made pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity and the commission shall be required to hold evidentiary hearings on all petitions so received. The commission shall base its final determination upon a finding that the commission's designation of electric service areas is in the public interest.

3. The provisions of sections 386.310, RSMo, and 393.106, RSMo, and sections 394.160 and 394.315 to the contrary notwithstanding, before becoming effective, all territorial agreements entered into under the provisions of this section, including any subsequent amendments to such agreements, or the

transfer or assignment of the agreement or any rights or obligations of any party to an agreement, shall receive the approval of the public service commission by report and order. Applications for commission approval shall be made and notice of such filing shall be given to other electrical suppliers pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission.

4. The commission shall hold evidentiary hearings to determine whether such territorial agreements should be approved or disapproved, **except in those instances where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties, such hearings may be waived by agreement of the parties.** The commission may approve the application if it [shall after hearing determine] **determines** that approval of the territorial agreement in total is not detrimental to the public interest. Review of commission decisions under this section shall be governed by the provisions of sections 386.500 to 386.550, RSMo.

5. Commission approval of any territorial agreement entered into under the provisions of this section shall in no way affect or diminish the rights and duties of any supplier not a party to the agreement or of any electrical corporation authorized by law to provide service within the boundaries designated in such territorial agreement. In the event any electrical corporation which is not a party to the territorial agreement and which is subject to the jurisdiction, control and regulation of the commission under chapters 386, RSMo, and 393, RSMo, has heretofore sought or hereafter seeks authorization from the commission to render electric service or construct, operate and maintain electric facilities within the boundaries designated in any such territorial agreement, the commission, in making its determination regarding such requested authority, shall give no consideration or weight to the existence of any such territorial agreement and any actual rendition of retail electric service by any of the parties to such territorial agreement will not preclude the commission from granting the requested authority.

6. The commission shall have jurisdiction to entertain and hear complaints involving any commission-approved territorial agreement. Such complaints shall be brought and prosecuted in the same manner as other

complaints before the commission. [After hearing,] **The commission shall hold an evidentiary hearing regarding such complaints. However, in those instances where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties, such hearings may be waived by agreement of the parties.** If the commission determines that [the] a territorial agreement [is not] **that is the subject of a complaint is no longer** in the public interest, it shall have the authority to suspend or revoke the territorial agreement. If the commission determines that the territorial agreement is still in the public interest, such territorial agreement shall remain in full force and effect. Except as provided in this section, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting, or management of any rural electric cooperative or municipally owned utility, or to amend, modify, or otherwise limit the rights of electrical suppliers to provide service as otherwise provided by law.

7. Notwithstanding the provisions of section 386.410, RSMo, the commission shall by rule set a schedule of fees based upon its costs in reviewing proposed territorial agreements for approval or disapproval. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case. The fees shall be paid to the director of revenue who shall remit such payments to the state treasurer. The state treasurer shall credit such payments to the public service commission fund, or its successor fund, as established in section 33.571, RSMo. Nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any rural electric cooperative or municipally owned utility and except as provided in this section nothing shall affect the rights, privileges or duties of rural electric cooperatives, electrical corporations or municipally owned utilities.

394.315. 1. As used in this section, the following terms mean:

(1) "Permanent service", electrical service provided through facilities which have been permanently installed on a structure and which are designed to provide electric service for the structure's anticipated needs for the indefinite future, as contrasted with facilities installed temporarily to provide electrical service during construction. Service provided temporarily shall be at the risk of the electrical supplier and shall not be determinative of the rights of the provider or recipient of permanent service;

(2) "Structure" or "structures", an agricultural, residential, commercial,

industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical supplier. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section shall be construed to confer any right on a rural electric cooperative to serve new structures on a particular tract of land because it was serving an existing structure on that tract.

2. Once a rural electric cooperative, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800, RSMo, and section 394.080, or pursuant to a territorial agreement approved under section 394.312. **The public service commission, upon the joint application and agreement of an electric cooperative and another electric service supplier of retail electric energy, shall order a change of supplier to the structure of the other electric service supplier if the structure is located in the service area designated to the other electric service supplier under section 394.500, or the territory of the other electric service supplier under a territorial agreement under section 394.312 unless the commission finds that the customer at the structure will not receive adequate and reliable electric service if the change of supplier is granted. The applicants shall file a statement with the secretary of the commission, with a copy to the office of the public counsel, that identifies the structure to be changed, the electric service supplier to serve the structure after the change, and the justification for the change. Unless the staff of the commission or the office of the public counsel files an objection to the application and agreement within thirty days of the filing, the application shall be deemed approved by the commission. If the staff of the commission or the office of the public counsel files an objection to the application, the commission shall, after hearing, issue its report and order either approving or denying the proposed transfer. For all other applications for change of suppliers, the public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the**

public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided herein, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any such cooperative, and except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing cooperatives pursuant to this chapter. Nothing in this section shall be construed to make lawful any provision of service which was unlawful prior to July 11, 1991. Nothing in this section shall be construed to make unlawful the continued lawful provision of service to any structure which may have had a different supplier in the past, if such a change in supplier was lawful at the time it occurred. However, those customers who had canceled service with their previous supplier or had requested cancellation by May 1, 1991, shall be eligible to change suppliers as per previous procedures. No customer shall be allowed to change electric suppliers by disconnecting service between May 1, 1991, and July 11, 1991.

394.500. 1. Competition to provide retail electric service, as between rural electric cooperatives and electrical corporations, may be displaced by public service commission assigned electric service areas, but only to the extent hereinafter provided for in this section.

2. As used in this section, and only for purposes of implementing this section, the following terms shall mean:

(1) "Critical date", December 1, 2007, for any county of the first classification with more than eighty-two thousand but fewer than eighty-two thousand one hundred inhabitants, any county of the third classification with a township form of government and with more than twelve thousand five hundred but fewer than twelve thousand six hundred inhabitants, any county of the third classification without a township form of government and with more than twelve thousand but fewer than twelve thousand one hundred inhabitants, any county of the third classification without a township form of government and with more than twenty-six thousand nine hundred but fewer than twenty-seven thousand inhabitants, any county of the third classification

with a township form of government and with more than twenty-one thousand nine hundred fifty but fewer than twenty-two thousand nine hundred fifty inhabitants, any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, any county of the third classification without a township form of government and with more than nine thousand six hundred fifty but fewer than nine thousand seven hundred fifty inhabitants, any county of the third classification without a township form of government and with more than thirteen thousand seven hundred but fewer than thirteen thousand eight hundred inhabitants, any county of the first classification with more than two hundred forty thousand three hundred but fewer than two hundred forty thousand four hundred inhabitants, any county of the third classification without a township form of government and with more than thirty-two thousand five hundred but fewer than thirty-two thousand six hundred inhabitants, any county of the second classification with more than fifty-four thousand two hundred but fewer than fifty-four thousand three hundred inhabitants, any county of the third classification without a township form of government and with more than twenty-eight thousand six hundred but fewer than twenty-eight thousand seven hundred inhabitants, any county of the first classification with more than thirty-nine thousand seven hundred but fewer than thirty-nine thousand eight hundred inhabitants, any county of the first classification with more than seventy-one thousand three hundred but fewer than seventy-one thousand four hundred inhabitants, any county of the first classification with more than seventy-three thousand seven hundred but fewer than seventy-three thousand eight hundred inhabitants, any county of the first classification with more than one hundred eighty-four thousand but fewer than one hundred eighty-eight thousand inhabitants, any county of the third classification without a township form of government and with more than twenty-three thousand three hundred fifty but fewer than twenty-three thousand four hundred fifty inhabitants, any county of the third classification without a township form of government and with more than eighteen thousand nine hundred but fewer than nineteen thousand inhabitants, any county of the third classification with a township form of government and with more than

eleven thousand five hundred but fewer than eleven thousand six hundred inhabitants, any county of the first classification with more than eighty-five thousand nine hundred but fewer than eighty-six thousand inhabitants, any county of the third classification without a township form of government and with more than eight thousand nine hundred twenty-five but fewer than nine thousand twenty-five inhabitants, any county of the first classification with more than sixty-eight thousand six hundred but fewer than sixty-eight thousand seven hundred inhabitants, any county of the third classification without a township form of government and with more than sixteen thousand six hundred but fewer than sixteen thousand seven hundred inhabitants, any county of the third classification without a township form of government and with more than twenty-five thousand eight hundred but fewer than twenty-five thousand nine hundred inhabitants, any county of the first classification with more than forty thousand seven hundred but fewer than forty thousand eight hundred inhabitants, any county of the third classification without a township form of government and with more than ten thousand six hundred but fewer than ten thousand seven hundred inhabitants, any county of the third classification without a township form of government and with more than fifteen thousand seven hundred but fewer than fifteen thousand eight hundred inhabitants, any county of the third classification without a township form of government and with more than eight thousand eight hundred twenty-five but fewer than eight thousand nine hundred twenty-five inhabitants, any county of the third classification without a township form of government and with more than twenty-three thousand five hundred but fewer than twenty-three thousand six hundred inhabitants, any county of the third classification without a township form of government and with more than twelve thousand nine hundred seventy-five but fewer than thirteen thousand seventy-five inhabitants, any county of the third classification without a township form of government and with more than eleven thousand seven hundred fifty but fewer than eleven thousand eight hundred fifty inhabitants, any county of the second classification with more than fifty-five thousand six hundred but fewer than fifty-five thousand seven hundred inhabitants, any county of the third classification without a township form of

government and with more than six thousand six hundred but fewer than six thousand seven hundred inhabitants, any county of the third classification without a township form of government and with more than twenty-three thousand two hundred fifty but fewer than twenty-three thousand three hundred fifty inhabitants, and any county of the third classification without a township form of government and with more than thirteen thousand two hundred but fewer than thirteen thousand three hundred inhabitants counties; December 1, 2009, for any county of the third classification with a township form of government and with more than sixteen thousand six hundred but fewer than sixteen thousand seven hundred inhabitants, any county of the third classification without a township form of government and with more than seventeen thousand one hundred but fewer than seventeen thousand two hundred inhabitants, any county of the third classification without a township form of government and with more than fifteen thousand six hundred but fewer than fifteen thousand seven hundred inhabitants, any county of the third classification with a township form of government and with more than twenty thousand four hundred but fewer than twenty thousand five hundred inhabitants, any county of the third classification with a township form of government and with more than seven thousand nine hundred but fewer than eight thousand inhabitants, any county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, any county of the third classification without a township form of government and with more than thirty-eight thousand nine hundred but fewer than thirty-nine thousand inhabitants, any county of the third classification without a township form of government and with more than twenty-four thousand five hundred but fewer than twenty-four thousand six hundred inhabitants, any county of the third classification without a township form of government and with more than thirty-seven thousand two hundred but fewer than thirty-seven thousand three hundred inhabitants, any county of the third classification without a township form of government and with more than ten thousand three hundred but fewer than ten thousand four hundred inhabitants, any county of the third classification without a township form of government and with more than thirteen thousand

seventy-five but fewer than thirteen thousand one hundred seventy-five inhabitants, any county of the third classification with a township form of government and with more than ten thousand four hundred but fewer than ten thousand five hundred inhabitants, any county of the third classification without a township form of government and with more than nine thousand four hundred fifty but fewer than nine thousand five hundred fifty inhabitants, any county of the third classification without a township form of government and with more than twenty-four thousand nine hundred but fewer than twenty-five thousand inhabitants, any county of the third classification without a township form of government and with more than twenty-one thousand six hundred but fewer than twenty-one thousand seven hundred inhabitants, any county of the third classification without a township form of government and with more than twelve thousand one hundred but fewer than twelve thousand two hundred inhabitants, any county of the third classification without a township form of government and with more than eighteen thousand three hundred but fewer than eighteen thousand four hundred inhabitants, any county of the third classification without a township form of government and with more than nine thousand three hundred but fewer than nine thousand four hundred inhabitants, any county of the third classification without a township form of government and with more than nine thousand five hundred fifty but fewer than nine thousand six hundred fifty inhabitants, any county of the third classification without a township form of government and with more than six thousand four hundred but fewer than six thousand five hundred inhabitants, any county of the third classification without a township form of government and with more than five thousand three hundred but fewer than five thousand four hundred inhabitants, any county of the third classification with a township form of government and with more than twenty-one thousand eight hundred fifty but fewer than twenty-one thousand nine hundred fifty inhabitants, and any county of the fourth classification with more than thirty-two thousand nine hundred but fewer than thirty-three thousand inhabitants; and December 1, 2011, for all remaining counties and any city not within a county.

(2) "Electric service supplier", any chapter 394 rural electric

cooperative or any chapter 386 electrical corporation that provides retail electric service in this state. The term does not include municipally owned electric utilities.

(3) "Permitted exception", a right in a territorial agreement under section 394.312 permitting a party to serve new structures in a defined region or area located in the exclusive service territory of the other party to the territorial agreement.

(4) "Electric service area", an area with designated and fixed boundaries that specifically identify the area in which a particular electric service supplier is authorized to provide retail electric service that has been determined and designated by the public service commission in a report and order issued in accordance with this section. Such electric service areas shall be exclusive to the designated electric service supplier, except to the extent that they may contain permitted exceptions as provided in this section.

(5) "Structure" or "structures", an agricultural, residential, commercial, industrial, or other building or a mechanical installation, machinery, or apparatus at which retail electric energy is being delivered through a metering device located on or adjacent to the structure and connected to the lines of an electric service supplier.

(6) "Existing structure", any structure that has received retail electric energy from an electric service supplier prior to or on the effective date of the report and order designating an electric service area in which the structure is located. The term also shall include structures subsequently repaired, remodeled, added to, or replaced on the same land parcel if the structure can be served from the preexisting electric service facilities.

(7) "New structure", any structure that did not receive electric energy from an electric service supplier prior to or on the effective date of the report and order designating an electric service area in which the structure is located and does not meet the definition of an existing structure.

3. Because under current technology the distribution and retail sale of electricity is a natural monopoly, it is therefore declared to be the policy of the state of Missouri that economic efficiency and improved public safety can be accomplished by reducing wasteful duplication of

electric distribution facilities through the designation of electric service areas in the manner contained in this section. Notwithstanding the provisions of any law to the contrary, after the effective date of a public service commission report and order designating electric service areas, each electric service supplier receiving an electric service area by that order shall have the power, duty, and obligation to provide retail electric service to all new structures within its electric service area, regardless of the size of the load or the characteristics of the customer's requirements. Further, except as provided in subsection 20 of this section, each electric service supplier shall be prohibited from providing retail electric service to new structures located within the designated electric service area of another electric service supplier, either directly or indirectly such as through a parent, affiliate, or subsidiary of the electric service supplier, whether said parent, affiliate, or subsidiary be a corporation, limited liability company, partnership, or cooperative corporation. Electric service areas created under the provisions of this section shall be assignable, and any assignment shall become effective upon compliance with all other provisions of applicable law and approval by the public service commission upon receipt of a written notice of the assignment. The commission shall approve the assignment unless it determines that the entity to whom the service area is assigned is incapable of providing adequate and reliable electric service to the assigned area.

4. Electric service suppliers shall retain the right to furnish retail electric service to all existing structures that they are serving by permanent electric service facilities on the effective date of the report and order designating their respective electric service areas, regardless of the location of the structure.

5. The location of a structure for purposes of electric service areas established under this section shall be the geographical location at which electric energy is used, regardless of the metering point or point of delivery. The initial electric service consumer at a new structure, which is located on or crossed by any commission-approved electric service area boundary line, shall be permitted to choose either electric service supplier for permanent electric service, provided that the meter is installed within the chosen supplier's service area. Once

electric service to the structure has been so provided, there shall not be any subsequent change of supplier unless it is made under subsection 2 of section 393.106, RSMo, or subsection 2 of section 394.315.

6. The commission shall have jurisdiction to designate electric service areas upon application by one or more of the electric service suppliers in a given area. Any request for issuance of electric service areas that includes any part of a county shall include the entire county. Applications for the designation of electric service areas under this section shall be made under the rules of the commission regarding applications. Unless a joint application is filed by all electric service providers in an area covered by the application, no application may be filed to designate electric service areas in a county prior to that county's critical date. Such applications shall list all electric service suppliers operating in the area covered by the application and all territorial agreements that apply to land located wholly or partially within the boundaries of the area covered by the application, and shall request that the commission determine electric service area boundaries for all electric service suppliers in the area covered by the application. Within three business days of the filing of the application, the commission shall send written notice of the application to all other electric service suppliers who are listed as providing service within the boundaries of the area covered by the application areas shown in the application and who are not co-applicants. The commission shall be required to issue service areas on all applications so received. Unless otherwise ordered by the commission for good cause shown and with the consent of the applicants, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission.

7. If a joint application for designation of electric service areas is filed with the commission and the electric service areas are stipulated to by all electric service suppliers in the area covered by the application, the commission shall issue a report and order designating the electric service areas as they were submitted in the application unless the commission makes a specific finding supported by clear and convincing evidence that future electric consumers in the proposed service areas will not receive adequate and reliable electric service from the electric

service supplier designated to serve in that area. The verified application shall constitute sufficient evidence on which the commission may issue its report and order.

8. If a commission-approved territorial agreement under section 394.312 exists and is in force at the time of the application and that agreement allocates service areas for any electric service suppliers for any part of the area contained in the application, the commission shall give full force and effect to the territorial allocations and permitted exceptions contained in the territorial agreement in its report and order designating electric service areas unless the parties to the territorial agreement or their successors in interest agree to alter or amend the said territorial agreement, in which case the amended agreement shall be used.

9. In all other applications for the designation of an electric service area, the commission shall hold evidentiary hearings to determine the electric service area boundaries. The only parties that shall have standing and may participate in these hearings are all electric service suppliers operating electric distribution facilities in the area covered by the application, the staff of the commission, and the office of the public counsel. The office of the public counsel shall represent the interests of electric consumers consistent with section 386.710, RSMo.

10. The commission shall apply the following criteria in determining the electric service area boundaries:

(1) If the electric service suppliers prior to or at the hearing enter into a stipulation that sets service area boundaries for all or a portion of the proposed service area, then the commission shall base the applicable portion of the overall service area boundaries upon the boundaries contained in the stipulation;

(2) Consider geographic and topological features affecting electric distribution facilities;

(3) Locate electric distribution facilities in an environmentally sound manner to the extent economic;

(4) Promote adequate, reliable, and efficient electric service to all Missouri electric consumers;

(5) Allow electric suppliers to make efficient use of existing facilities and recover existing investment in such facilities;

(6) Support the economic viability of affected electric service suppliers;

(7) As between two or more chapter 386, RSMo, electrical corporations, the commission shall to the fullest extent possible utilize the boundaries currently in effect and previously established for them in proceedings under section 393.170, RSMo.

In any case under this section, the commission shall hear evidence from the parties pertaining to the standards listed in this subsection and how they relate to boundary line proposals of the parties. Any evidence not relevant to the standards listed herein, including but not limited to the retail electric rates and ratemaking processes of the electric service suppliers, the preference of local political subdivisions, developers, or customers, service incentives offered or not offered by the respective electric service suppliers and whether the electric service supplier is a rural electric cooperative or an electrical corporation shall be excluded from evidence by the commission. No party shall be permitted to seek through discovery any information that is related to matters not to be considered by the commission in the proceeding. Although no service area shall be designated in any part of any county not contained in the area covered by the application, evidence may be offered as to the relevant criteria as they may be affected by matters located outside the counties covered by the application. In applying the relevant criteria, the commission shall consider only electric distribution facilities of the electric service suppliers as such existed on January 1, 2005, unless the electric service suppliers who are parties to the proceeding unanimously agree on a different date. For the purposes of this subsection, electric distribution facilities shall be the lines and operating equipment of the electric service suppliers used to provide retail electric service to end use consumers and operated at a voltage of fifteen thousand volts or less. Generation and transmission assets shall not be considered.

11. In the absence of a unanimous stipulation of all the electric service providers, prior to hearing, all of the electric service suppliers who are parties to the proceeding shall individually submit proposed electric service area boundaries covering all of the territory contained in the application. Such filings shall be simultaneous with no electric service supplier allowed access to the proposal of any other electric

service provider until it has filed its own proposal. The commission, after hearing the evidence, shall choose only one of the submitted proposals and authorize it to be implemented without deviation. As an option, if there is unanimous agreement of the electric service suppliers who are parties to the proceeding, the commission may establish electric service area boundaries in any contested areas as it sees fit in application of the criteria listed in subsection 10 of this section in light of the preponderance of evidence presented.

12. The commission shall designate the respective electric service areas for electric service suppliers in cases brought under this section by report and order, and it shall not in said order impose any conditions of any kind on the electric service suppliers. The report and order shall also state that, to the extent necessary to conform to any new boundaries being established, the prior certificates of convenience and necessity of any electrical corporation or its predecessor in interest shall be automatically amended to reflect its new service area. The order shall direct the electrical corporation to make any necessary compliance filing to implement revised descriptions of the new service areas in the rate schedules on file with the commission. Further, in future ratemaking proceedings, the commission shall give no consideration or weight to the existence of service areas or the method said service areas were determined.

13. Unless the commission makes a specific finding supported by clear and convincing evidence that an electric service supplier is incapable of providing electric service in its proposed service areas or that the configuration of the proposed service areas will over time increase wasteful duplication of electric distribution facilities and materially increase safety hazards to the general public, the commission shall grant all applications for service areas under the criteria and requirements contained in this section.

14. Notwithstanding sections 386.510, RSMo, 386.520, RSMo, 386.530, RSMo, and 386.540, RSMo, within thirty days after the issuance of a final report and order upon an application for the designation of electric service areas, any party may appeal to the appellate court having jurisdiction over appeals from the circuit court of Cole County for the purpose of having the reasonableness or lawfulness of the report

and order determined.

15. Upon the effective date of the report and order designating an electric service area, all existing commission-approved territorial agreements between the electric service suppliers that cover the same or any portion of the designated electric service areas, shall terminate with respect to the effected service area, provided that any permitted exceptions shall remain in effect for a period of five years from the effective date of the report and order.

16. Commission designation of electric service areas to any electric service supplier under the provisions of this section shall in no way affect or diminish the rights and duties of any municipally owned electric utility authorized by law to provide service within any electric service area.

17. Commission designation of electric service areas to any electric service supplier under the provisions of this section shall in no way affect any electrical corporation's, rural electric cooperative's, or municipally owned utility's right to construct, operate, maintain, repair, or replace, or utilize the power of eminent domain pertaining to such of its electric generation, distribution, and transmission facilities as may be located within its electric service area or the designated electric service area of other suppliers. Nothing in this section shall be construed as adversely affecting the rights of any electrical corporation, rural electric cooperative, or municipally owned electric utility to carry on their operations as each deems necessary, appropriate, or convenient to provide electric service to its customers as otherwise allowed by law. In the event any electrical corporation that is subject to the jurisdiction, control, and regulation of the commission under chapters 386, RSMo, and 393, RSMo, has heretofore sought or hereafter seeks authorization from the commission to render electric service or construct, operate, and maintain electric generation, transmission, and distribution facilities within the boundaries designated in any electric service area, the commission, in making its determination regarding such requested authority, shall give no consideration or weight to the existence of the electric service areas and the existence of such electric service areas shall not be a sufficient reason to preclude the commission from granting the requested authority. Electric service suppliers may sell

electricity at wholesale to any other electric service supplier, municipally owned electric utility, municipal joint pooling commission, or any other entity wherever located regardless of electric service area designations. The determination of exclusive electric service areas under this section shall not operate or be construed to deprive any other owners or lessees of existing electric transmission or distribution lines or facilities that may be wholly or partially located within the designated electric service area of any rights that such owners or lessees may otherwise have to continue to operate or utilize those lines or facilities or add to, reconstruct, alter, or replace them as otherwise permitted by law except that such lines may not be used to authorize the provision of retail electric service in contravention of subsection 3 of this section.

18. The commission shall have jurisdiction to amend any commission-approved electric service area upon application of the electric service supplier to whom the service area was issued. In the event of an agreement among all the affected electric service suppliers to amend the established boundaries of a designated electric service area, the electric service suppliers may file an abbreviated application under commission rules setting out in detail the proposed changes and the reasons for such changes, with supporting maps and legal descriptions. If there is no opposition to the proposed changes, the commission shall issue a report and order containing the amended electric service areas with revised boundaries reflecting the agreement not later than sixty days after the application is properly filed with the secretary of the commission. If an affected electric service supplier opposes the proposed amendments, the case shall be treated as a contested case and the otherwise applicable provisions of this section shall apply to the commission's determination.

19. The commission shall have jurisdiction to amend the boundaries of an electric service area, as a remedy in a complaint case that alleges that an electric service provider is incapable of serving in all or part of a designated electric service area. Such complaints shall be brought and prosecuted in the same manner as other complaints before the commission. After hearing, if the commission determines that the electric service provider is incapable of serving in the affected area,

it shall have the authority to amend the electric service area to designate a new electric service supplier. If the commission determines that the electric service provider is capable of serving in the affected area, the existing service areas shall remain in full force and effect.

20. Without modifying established boundaries of electric service areas, an electric service supplier may agree on a case-by-case basis to allow a structure in its electric service area to receive service from another electric service supplier or a municipally owned electric utility upon agreement with the other electric service supplier or municipally owned electric utility. The parties to the agreement shall file a statement with the secretary of the commission with a copy to the office of the public counsel that identifies the structure, the electric service supplier or municipally owned electric utility to serve the structure, the justification for the exception, and indicates that the parties and the customer support the exception. There will be no filing fee for these exception statements. Each statement shall be accompanied by an acknowledgment signed by the customer to be served that acknowledges such customer's receipt of notice of the contemplated electric service to be provided, and that the electric service represents an exception to the electric service area approved by the commission and shall indicate the customer's consent to be served by the electric service supplier or municipally owned electric utility contemplated in the exception statement. Unless the staff of the commission or the office of the public counsel files an objection to the exception within five days of the filing, the exception shall be deemed approved by the commission. If the staff of the commission or the office of the public counsel files an objection to the exception, the commission shall, after hearing, issue its report and order either approving or denying the proposed exception. The commission shall approve the proposed exception unless it finds that the customer will not receive adequate and reliable electric service if the exception is applied.

21. Except as specifically provided in this section, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting, or management of any rural electric cooperative, or to amend, modify, or otherwise limit the rights of any electric service suppliers to provide

electric service as otherwise provided by law.

22. Notwithstanding the provisions of section 386.410, RSMo, the commission shall by rule set a schedule of fees based upon its costs in reviewing and adjudicating electric service area requests under this section, provided that the application fee and cost shall not exceed two thousand dollars. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case. The fees shall be paid to the director of revenue, who shall remit such payments to the state treasurer. The state treasurer shall credit such payments to the public service commission fund, or its successor fund, as established in section 33.571, RSMo. The commission shall by December 1, 2005, promulgate such rules as are necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

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